

SUBCHAPTER G—DEFENSE CONTRACTING

PART 160—DEFENSE ACQUISITION REGULATORY SYSTEM

Sec.

160.1 Purpose.

160.2 Applicability.

160.3 Definitions.

160.4 Policy and procedures.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 137.

SOURCE: 43 FR 15150, Apr. 11, 1978, unless otherwise noted.

§ 160.1 Purpose.

This part establishes policy and procedures for the management and operation of the Department of Defense acquisition regulatory system.

§ 160.2 Applicability.

The provisions of this part apply to the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff, the Military Departments and the Defense Agencies. These provisions also apply to other Federal agencies that are directed by the Office of Federal Procurement Policy (OFPP), Office of Management and Budget, to comply with the provisions of this part.

§ 160.3 Definitions.

(a) *Acquisition*. Any relationship entered into to acquire property or services for the direct benefit or use of the Department of Defense to include the management and business functions and disciplines involved in establishing and continuing the relationship.

(b) *Contracts*. A function including tasks, skills and activities essential in conducting contractual relationships in the acquisition of property and services by the Department of Defense. The term “contracts” shall replace the term “procurement” as used in the context of an acquisition function throughout the Department.

(c) *Procurement*. The term “procurement” shall not be used to identify functions of the Department of Defense to acquire property and services except as relates to the budgetary process.

§ 160.4 Policy and procedures.

(a) *Defense Acquisition Regulatory System*. The Defense Acquisition Regulatory System (DARS) is a system of policies and regulations to guide managers in the conduct of DoD acquisition activities and also to provide the detailed functional regulations required to govern DoD contractual actions in accordance with applicable laws and the need for efficiency. The DARS focuses on the business management needs at the operating levels and on the Government’s actions at the interface with the marketplace in the acquisition of services and materiel. Attention shall be given to the unique business demands in the area of major system acquisitions consistent with policies set forth in 32 CFR part 213, DoD Directive 5000.2¹ and OMB Circular A-109.

(1) The DARS shall be managed as a system of integrated, coordinated policies and regulations, responsive to the needs of the Department of Defense and to the provisions of the Federal Procurement Regulatory System. Where feasible, the DARS will achieve uniform policies with the Federal Procurement Regulation.

(2) The Deputy Under Secretary of Defense for Research and Engineering (Acquisition Policy), OUSD/R&E, is responsible for the DARS and for the development and implementation of the necessary policy and procedures of the regulatory system.

(b) *DARS Regulations*. DARS policy and procedures shall be published in the Defense Acquisition Regulation (DAR) and in DoD Directives, Instructions, Circulars and Manuals as appropriate to the action. The DAR replaces the Armed Services Procurement Regulation (ASPR), and all laws, policy and procedures applicable to the ASPR apply equally to the DAR except as

¹Filed as part of original. Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120. Attention: Code 301.

those policies and procedures not directed by law are changed by the provisions of this part. Effective with the issue of this part, the ASPR is redesignated as the DAR and all policies and procedures continue in force.

(c) *Defense Acquisition Regulatory Council.* The Defense Acquisition Regulatory Council (DARC) is established to support the Council Director in the management of the DARS and in the development and implementation of required policy and procedures. The DARC includes all functions formerly performed by the Armed Services Procurement Regulation Committee.

(1) *Council membership.* The DARC membership shall include a Policy and a Legal representative from each of the Military Departments and from the Defense Logistics Agency (DLA). Each Military Department Policy member shall be appointed by the Assistant Secretary having responsibility for the acquisition function in the Department. The Legal representative shall be appointed by the Department General Counsel. The DLA members shall be appointed by the Director, DLA. Each appointment to the Council shall be made for a minimum term of 2 years and a maximum of 4 years as a principal full-time assignment approved by the Deputy Under Secretary of Defense (Acquisition Policy). Members appointed to the DARC shall have extensive acquisition experience in order to deal with the matters to come before the Council. Policy members shall be authorized to develop and state the final positions of their respective organizations on all matters before the Council. Each member shall have a TOP SECRET security clearance.

(2) *Council Director.* The Director (Contracts and System Acquisition), OUSD/R&E, shall appoint the Council Director. Such appointment shall be subject to the approval of the Deputy Under Secretary of Defense (Acquisition Policy).

(3) *Council Executive Secretary.* The Executive Secretary, DARC, shall be appointed by and serve under the direction of the Council Director.

(d) *Operation of the DARC.* The Council shall operate under the direction of the Council Director to develop and

implement acquisition policy and procedures.

(1) Council activities shall be conducted according to rules and procedures established by the Council Director within the policy guidance issued by the Director (Contracts and Systems Acquisition), OUSD/R&E.

(2) The DARC shall consider all matters determined by the Council Director to be within the scope of the Council's responsibilities.

(3) Substantive changes to DARS policy and procedures may be proposed by submitting appropriate recommendations to include specific regulatory language to the Director (Contracts and System Acquisition), through the following officials. Proposed routine administrative changes may be submitted directly to the Council Director.

(i) *DOD organizations.* The Military Departments, the Defense Agencies and the Office of the Joint Chiefs of Staff shall submit recommendations through a designated senior official responsible for acquisition policy matters, OSD staffs shall submit recommendations through the staff principals.

(ii) *Federal agencies.* Other Federal agencies, required by OFPP to conduct acquisition functions in accordance with DARS policy, shall submit proposed changes through a senior agency official designated by the agency head to represent the agency on all matters involving the DARS. The designated official shall be authorized to communicate directly with the DARC and to give final coordination for the agency.

(iii) *Private sector.* Private sector entities with an interest in DARS policy will submit proposed changes directly. Industry associations will designate an individual to the Council Director and establish procedures for the individual to represent the association in commenting on DARS policy actions prior to final action by the Council. The procedures will provide for the completion of industry actions with the Council on a schedule not to exceed 60 days.

(4) The Council Director is authorized to establish working groups to support the Council in dealing with issues in specialized areas. The Council Director

will request the participation of representatives with the required expertise from OSD staff elements, Military Departments and Defense Agencies. Working groups will be assigned specific tasks by the Council Director to be completed on a schedule established with the task assignment.

(5) The Council Director is authorized to designate a Military Department of DLA to be the lead agency in developing a specific policy or procedure for the DARS. The Council Director shall make the assignment through the Policy member of the designated lead agency. The lead agency shall develop the proposed language for the DARS, complete the coordination requested by the Council Director, document nonconcurrences together with the position of the lead agency, and submit the completed action to the Council Director through the lead agency's Policy member. The procedure for accomplishing the task shall be determined by the lead agency. DOD activities shall provide support as requested by the lead agency.

(6) The Council Director shall establish schedules for the completion of each case before the Council based on the needs and urgency of the individual cases. Schedules shall require completion of the Council's action in a period not to exceed 120 days independent of industry coordination, except in specific cases where the Council Director determines an extended schedule is required. In such cases, the schedule will be approved by the Deputy Under Secretary of Defense (Acquisition Policy) or his designated representative.

(7) On matters of major policy or issues where a consensus of the Policy members has not been achieved after a reasonable period of debate, the Council Director shall present the Departmental and Agency positions to the Deputy Under Secretary (Acquisition Policy), or his designated representative for resolution after consultation with the appropriate senior officials of the Military Departments and DLA. The decision of the Deputy Under Secretary of Defense (Acquisition Policy), or his designated representative shall be implemented without further coordination.

(8) The Council Director shall require summary minutes of Council meetings to be maintained as a permanent record by the Executive Secretary. Minutes will clearly document the positions of the participating organizations on matters before the Council. The positions stated by other organizations shall be documented when in disagreement with the final decision.

(9) The Council Director shall report periodically to the Deputy Under Secretary of Defense (Acquisition Policy) on specific activities of the Council.

(e) *Supplementing Instructions.* Additional policies and procedures essential to the operation of the DARS shall be issued by the Under Secretary of Defense for Research and Engineering.

PART 162—PRODUCTIVITY ENHANCING CAPITAL INVESTMENT (PECI)

Sec.

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APPENDIX A TO PART 162—REPORTING PROCEDURES

AUTHORITY: 10 U.S.C. 136; E.O. 12367, 3 CFR, 1988 Comp., p. 566.

SOURCE: 56 FR 50271, Oct. 4, 1991, unless otherwise noted.

§ 162.1 Purpose.

This part:

(a) Updates policy, responsibilities, procedures, and guidance for the PECI process under DoD Directive 5010.31.¹

(b) Authorizes the publication of DoD 5010.36 36-H-2 "Productivity Enhancing Capital Investment (PECI) Handbook," consistent with DoD 5025.1-M.³

§ 162.2 Applicability and scope.

This part.

¹Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

²Copies will be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

³See footnote 1 to § 162.1(a).